#11
8/31/03

PATENT
Customer No. 22,852
Attorney Docket No. 05725.0412-01

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	
Roland DE LA METTRIE et al.	
Application No.: 09/877,031	Group Art Unit: 1751
Filed: June 11, 2001	Examiner: E. Elhilo
For: OXIDIZING COMPOSITION AND USES FOR TREATING KERATIN FIBRES	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

RESPONSE TO RESTRICTION REQUIREMENT

In an Office Action dated July 23, 2003, the Examiner required restriction under 35 U.S.C. §§ 121 and 372 between Groups I-IV. Applicants provisionally elect, with traverse, to prosecute Group I, claims 33-54, 61, and 63 drawn to a ready to use composition for oxidation dyeing of keratin fibers and its method of using.

Applicants traverse, first of all, on the ground that the restriction requirement has not been made with the proper showing.

The Examiner reasons that the restriction is proper under PCT Rules 13.1 and 13.2 because "All the components of the special technical feature are known." Office Action at page 2. Applicants respectfully point out that PCT Rule 13.2 requires the Examiner to determine whether a technical relationship exists between the special

technical features of an invention, not whether those special technical features are known. *See* PCT Rule 13.2.

Further, PCT Rules 13.1 and 13.2 do not even apply to the present application. "Restriction practice [as opposed to unity of invention practice] continues to apply to U.S. national applications filed under 35 U.S.C. 111(a), even if the application filed under 35 U.S.C. § 111(a) claims priority to . . . an earlier U.S. national stage application submitted under 35 U.S.C. § 371." M.P.E.P. § 1893.03(d). As stated in MPEP § 201.06(c), "[a]pplications submitted under 37 C.F.R. 1.53(b) . . . are applications filed under 35 U.S.C. 111(a)." The present divisional application was thus filed under 35 U.S.C. § 111(a), and, even though it claims priority to, among other applications, a national stage application filed under 35 U.S.C. § 371, it is not subject to the unity of invention standards. Accordingly, the unity of invention objection should be withdrawn.

Finally, a restriction requirement should not be made, at least because a search and examination of the entire application can be made without serious burden. *See* M.P.E.P. § 803. Moreover, no indication can be found that the subject matter of the present claims A) is classified separately, B) has achieved a separate status in the art, or C) requires a different field of search. *See id.* at § 808.02.

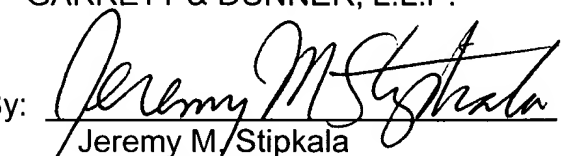
Applicants thereby request reconsideration of the restriction requirement by the Examiner and await an action on the merits. Please grant any extensions of time

required to enter this response and charge any required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, L.L.P.

Dated: August 19, 2003

By: 
Jeremy M. Stipkala
Reg. No. 44,359